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Paper No. 10

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**MAILED**

**SEP 30 2010**

In re Patent No. 6,338,210	:	<b>OFFICE OF PETITIONS</b>
Issue Date: January 15, 2002	:	
Application No. 09/377,929	:	<b>DECISION ON PETITION</b>
Filed: August 20, 1999	:	
Title: Removal of Accumulated Material	:	

This is a decision on the "PETITION TO ACCEPT PREVIOUS PAYMENT OF MAINTENANCE FEE", filed July 12, 2010, which is properly treated as a petition under 37 CFR 1.377.

The petition is DISMISSED.

Patentee is given TWO (2) MONTHS to file a request for reconsideration of this decision under 37 CFR 1.377. Any such request for reconsideration should be accompanied by the \$70 balance for the fee set forth below, and should include a cover letter entitled "REQUEST FOR RECONSIDERATION UNDER 37 CFR 1.377".

The above-identified patent issued on January 15, 2002. Therefore, the window for paying the second maintenance fee extended from January 15, 2009 to July 15, 2009 without surcharge, and from July 16, 2009 to January 15, 2010, with surcharge. No maintenance fee and surcharge having been received in full on or before January 15, 2010, the patent expired on January 16, 2010.

37 CFR 1.377 states, in pertinent part, that a "patentee who is dissatisfied with the refusal of the Patent and Trademark Office to accept and record a maintenance fee which was filed prior to the expiration of the patent may petition the Commissioner to accept and

record the maintenance fee."<sup>1</sup> The petition "must be filed within 2 months of the action complained of", and **must be accompanied by a \$200 fee**. However, the petition may include a request that the fee be refunded if the refusal to accept and record the maintenance fee is determined to have resulted from an error by the Patent and Trademark Office.<sup>2</sup>

Here, petitioner has not submitted the \$200 fee required for consideration of the petition. Instead, petitioner submitted \$130, together with \$1305 (for the \$1240 maintenance fee and \$65 surcharge). Accordingly, on request for reconsideration under 37 CFR 1.377, petitioner will need to submit the \$70 balance due.

If petitioner can not offer proof that he timely filed the maintenance fee and surcharge in full, **to the correct address**, prior to the expiration date of the patent, petitioner may seek to reinstate the expired patent pursuant to either 37 CFR 1.378(b) (unavoidable delay) or 37 CFR 1.378(c) (unintentional delay). Forms for both petitions are enclosed for petitioner's convenience.

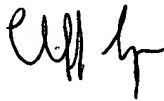
Receipt of the \$1,240 maintenance fee and \$65 surcharge, submitted with the instant petition, is acknowledged. However, until such time as patentee files a grantable petition under 37 CFR 1.377 or 37 CFR 1.378(b) or 1.378(c), the patent remains expired.

Further correspondence should be addressed as follows:

By mail:           Mail Stop Petitions  
                  Commissioner for Patents  
                  P.O. Box 1450  
                  Alexandria VA 22313-1450

By FAX:           (571)273-8300  
                  Attn: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3207.

  
Cliff Congo  
Petitions Attorney  
Office of Petitions

Enc: PTO/SB/66 (3 pages)  
      PTO/SB/65 (4 pages)  
      Privacy Act Statement (1 page)

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<sup>1</sup> 37 CFR 1.377(a). Emphasis added.

<sup>2</sup> See 37 CFR 1.377(b).